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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

Chapter 11

SEARS HOLDINGS CORPORATION, et. al.,

Case No. 18-23538 (RDD)

Debtors.¹

(Jointly Administered)

**AMAZON'S LIMITED OBJECTION AND RESERVATION OF RIGHTS
REGARDING ASSUMED CONTRACTS, PURSUANT TO SALE ORDER AND
ASSUMPTION AND ASSIGNMENT ORDER**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holding Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRE Holding Corporation (4816).

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

Amazon.com Services, Inc. and certain of its affiliates² (collectively, “**Amazon**”) hereby submit this limited objection and reservation of rights in accordance with (1) Paragraphs 19, 34 and 39 of the Court’s *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith, and (IV) Granting Related Relief*, entered herein on February 8, 2019 [Dkt. No. 2507] (the “**Sale Order**”), and (2) Paragraph 26 of the Court’s *Order (I) Authorizing Assumption and Assignment of Certain Executory Contracts and Leases and (II) Granting Related Relief*, entered herein on April 2, 2019 [Dkt. No. 3008] (the “**Assumption and Assignment Order**”), and respectfully state as follows:

LIMITED OBJECTION AND RESERVATION OF RIGHTS

1. The background to this limited objection and reservation of rights is set forth in Amazon’s Notice of Recoupment and Setoff Rights for Assumed Contracts, Pursuant to Sale Order ¶ 19 (the “**Recoupment Notice**”), a copy of which is attached

² Such affiliates include the Amazon entities listed in the exhibits attached to *Amazon’s Limited Objection and Reservation of Rights as to (I) Approval of Global Asset Sale Transaction, and (II) Debtors’ Proposed Assumption and Assignment of Executory Contracts* (the “**Limited Objection**”), dated January 25, 2019 [Dkt. No. 1986].

hereto as Exhibit "A" and incorporated herein.³ Amazon served the Recoupment Notice on counsel for the Debtors and Buyer on May 2, 2019.

2. Pursuant to the Amazon Contracts Notices, Buyer has designated various Amazon contracts with the Debtors for assumption and assignment under the Asset Purchase Agreement.

3. Amazon, Buyer and the Debtors are currently attempting to resolve three issues in connection with such assumption and assignment. Amazon has sought confirmation from both Buyer and the Debtors that:

(a) the Assumed Amazon Contracts are as set forth in Paragraph 9 of the Recoupment Notice;

(b) the Buyer Affiliates are Affiliated Designees under the Asset Purchase Agreement; and

(c) the Amazon Receivables and Net Receivable Amount are included in the Acquired Receivables acquired by Buyer under the Asset Purchase Agreement, and no other amounts are owed by Amazon to the Debtors with respect to the Assumed Amazon Contracts for the period through the Reconciliation Date.

4. Amazon files this limited objection and reservation of rights pending the resolution of these three issues. Amazon reserves the right to argue that confirming the

³ Capitalized terms used but not defined herein shall have the respective meanings set forth in the Recoupment Notice.

above three statements is a condition of the assumption and assignment of the Assumed Amazon Contracts to Buyer.⁴

5. Pursuant to Paragraph 35 of the Sale Order and Paragraph 27 of the Assumption and Assignment Order, Amazon will continue to seek to resolve the above issues consensually with Buyer and the Debtors, but reserves the right to seek such resolution through the Court.

CONCLUSION

WHEREFORE, for the foregoing reasons, Amazon respectfully requests that the Court (i) condition assumption and assignment of the Assumed Amazon Contracts on confirmation of the above three statements, and (ii) grant such other relief as may be appropriate.

Dated: May 3, 2019

Respectfully submitted,

/s/ Robert T. Honeywell

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⁴ Amazon also reserves the right to argue that recognizing in full the Amazon Credits described in the Recoupment Notice is a required Cure Cost for such assumption and assignment. *See also* Limited Objection at ¶ 19.

EXHIBIT "A"

RECOUPMENT NOTICE

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- :
In re Chapter 11
SEARS HOLDINGS CORPORATION, et. al., Case No. 18-23538 (RDD)

Debtors.¹ (Jointly Administered)

----- :
**AMAZON'S NOTICE OF RECOUPMENT AND SETOFF RIGHTS FOR
ASSUMED CONTRACTS, PURSUANT TO SALE ORDER ¶ 19**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holding Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRE Holding Corporation (4816).

To: Counsel for the Debtors and Transform Holdco, LLC (“**Buyer**”)
Date: May 2, 2019

Amazon.com Services, Inc. and certain of its affiliates² (collectively, “**Amazon**”) hereby submits this notice of recoupment and setoff rights in accordance with Paragraph 19 of the Court’s *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith, and (IV) Granting Related Relief* (the “**Sale Order**”), entered herein on February 8, 2019 [Dkt. No. 2507]:³

BACKGROUND

1. In connection with the Court’s approval of the Asset Purchase Agreement with Buyer, the Debtors proposed the assumption and assignment of certain executory contracts to which Amazon is a party, pursuant to three Assumption and Assignment Notices: the Initial Notice dated January 18, 2019 [Dkt. No. 1731], the Supplemental Notice dated January 23, 2019 [Dkt. No. 1774], and the Fourth Supplemental Notice dated March 29, 2019 [Dkt. No. 2995].

² Such affiliates include the Amazon entities listed in the exhibits attached to *Amazon’s Limited Objection and Reservation of Rights as to (I) Approval of Global Asset Sale Transaction, and (II) Debtors’ Proposed Assumption and Assignment of Executory Contracts* (the “**Limited Objection**”), dated January 25, 2019 [Dkt. No. 1986].

³ Capitalized terms used but not defined herein shall have the respective meanings set forth in the Sale Order, the Notice of Assumption and Assignment of Additional Contracts, filed by Buyer herein on April 25, 2019 [Dkt. No. 3356] (the “**First Additional Contracts Notice**”), and the Notice of Assumption and Assignment of Additional Contracts, filed by Buyer herein on April 26, 2019 [Dkt. No. 3397] (the “**Second Additional Contracts Notice**,” and together with the First Additional Contracts Notice, the “**Amazon Contracts Notices**”).

2. In response, Amazon filed its Limited Objection on January 25, 2019 [Dkt. No. 1986].

3. The Sale Order requires, in Paragraph 19, that Amazon and certain other objecting parties shall

provide a notice setting forth the monetary amount of rights of recoupment and setoff believed to be currently outstanding as of the time of the receipt of the applicable Designated Lease Notice or Designated Additional Contract Notice to counsel for the Debtors and the Buyer on or before eight (8) days after such non-Debtor counterparty's and such counterparty's counsel's (if known) receipt of the applicable Designated Lease Notice or Designated Additional Contract Notice (with any disputes over such amount resolved as provided in paragraph 35 of this Sale Order)

4. After entry of the Sale Order by the Court, Amazon, Buyer and four Buyer affiliates -- Transform SR LLC, Transform SR Brands Management LLC, Transform Innovel Solutions LLC, and Transform SR Protection LLC (collectively, the "**Buyer Affiliates**")⁴ -- reached a written agreement on April 13, 2019 (the "**Amazon-Buyer Agreement**") that, *inter alia*, (i) identified certain contracts to be assumed by Buyer that had outstanding credit and receivables amounts owed between Amazon and the Debtors, and (ii) set forth a mutually agreed reconciliation of the net amount owed by Amazon under such contracts as of March 12, 2019 (the "**Reconciliation Date**"), after accounting for outstanding credits that Amazon is entitled to thereunder.⁵

⁴ The Asset Purchase Agreement (Section 13.6) permits Buyer, on prior notice to the Debtors and subject to certain conditions, to assign its rights thereunder to affiliates, thereafter referred to as "Affiliated Designees" thereunder. Amazon understands that the Buyer Affiliates are Affiliated Designees.

⁵ The Amazon-Buyer Agreement also reserves the parties' continuing reconciliation rights for amounts accruing under the Assumed Amazon Contracts.

5. On April 25, 2019, Buyer filed its First Additional Contracts Notice. In the First Additional Contracts Notice, Buyer designates for assumption and assignment certain Additional Assigned Agreements identified on Exhibits 1 and 2 thereto, and states (in Paragraph 15) that those listed on Exhibit 2 were not previously listed in an Assumption and Assignment Notice filed with the Court. Pursuant to the Sale Order (Paragraph 34) -- and as stated in the First Additional Contracts Notice (Paragraph 18) -- Amazon has until May 3, 2019 to file an objection to the proposed cure costs and to assumption and assignment of the contracts listed on such Exhibit 2. The First Additional Contracts Notice states that Amazon has consented to assumption and assignment, and Exhibits 1 and 2 thereto state, next to the various contracts listed: "Cure amount resolved."

6. On April 26, 2019, Buyer filed its Second Additional Contracts Notice. In the Second Additional Contracts Notice, the Buyer designates for assumption and assignment an Additional Assigned Agreement that was previously listed in the Fourth Supplemental Notice.

7. The contracts between Amazon and the Debtors that are being assumed and assigned to Buyer and the Buyer Affiliates under the Asset Purchase Agreement (collectively, the "**Assumed Amazon Contracts**") are only partially listed in the Amazon-Buyer Agreement. The lists of contracts in the two Amazon Contracts Notices together comprise the Assumed Amazon Contracts, but the contract descriptions in such notices do not exactly match their descriptions in the Amazon-Buyer Agreement.

**NOTICE OF RECOUPMENT AND SETOFF RIGHTS PURSUANT TO
¶ 19 OF THE SALE ORDER**

8. Pursuant to Paragraph 19 of the Sale Order, Amazon serves this notice to confirm with Buyer and the Debtors: (1) exactly which contracts between Amazon and the Debtors are the Assumed Amazon Contracts; (2) the total monetary amount of Amazon's rights of recoupment and setoff under such contracts as of the Reconciliation Date; and (3) the Assumption Effective Date for such contracts.

9. The Assumed Amazon Contracts are as follows:

Agreement Name	Debtor Counterparty
Vendor Terms and Conditions, as subsequently revised and amended, and program policies and separate agreements incorporated therein including the Supplier Contract System	Sears Brands Management Corporation
Transportation and Services Agreement, amendments thereto, and related work orders	Innovel Solutions, Inc.
Amazon Services Business Solutions Agreements	Sears Holdings Corporation, Sears Protection Company, Sears, Roebuck and Co.
Tires Ship to Store Terms and Addenda for Sale of Installation Services	Sears Holdings Corporation, Sears Protection Company, Sears, Roebuck and Co.
Professional Seller Program Addenda	Sears Holdings Corporation, Sears Protection Company, Sears, Roebuck and Co.
Sponsored Ads Agreement, as well as certain insertion orders	Sears Brands Management Corporation
Mutual Nondisclosure Agreements	Sears Brands Management Corporation, Sears Holdings Corporation
Amazon Dash Replenishment Agreement, as amended	Sears Brands Management Corporation
Authorized Amazon Reseller Sales Agreement and amendments thereto	Sears, Roebuck and Co., Kmart Corporation
Amazon Brands Registry Terms of Use, as amended	Sears Brands Management Corporation

10. Amazon hereby provides notice of its recoupment and setoff rights in accordance with Paragraph 19 of the Sale Order. Amazon asserts that, as of the Reconciliation Date, it held unapplied credits in the total amount of \$8,453,522 (the "Amazon Credits"), which may be deducted by Amazon against amounts it then owed to

the Debtors under the Assumed Amazon Contracts in the total amount of \$10,630,853 (the “**Amazon Receivables**”), for a total net amount then owed by Amazon to the Debtors under the Assumed Amazon Contracts (*i.e.*, as of the Reconciliation Date) of \$2,177,331 (the “**Net Receivable Amount**”). Amazon asserts that the Amazon Credits are in the nature of recoupment rights, which it asserts against the Amazon Receivables.

11. Pursuant to the Amazon-Buyer Agreement, Amazon has agreed to pay the Net Receivable Amount to the Buyer Affiliates within ten days of the Assumption Effective Date for the Assumed Amazon Contracts.

12. Amazon’s entry into the Amazon-Buyer Agreement, including its agreement to pay the Net Receivable Amount to the Buyer Affiliates, is premised on its understanding that (a) the Buyer Affiliates are Affiliated Designees under the Asset Purchase Agreement, and (b) the Amazon Receivables and Net Receivable Amount are included in the Acquired Receivables acquired by Buyer thereunder. However, the Asset Purchase Agreement approved by the Court [Dkt. No. 2507-1], including the list of Specified Receivables in Schedule 1.1(k) thereto, does not provide any itemized detail of exactly which receivables comprise the Acquired Receivables.

13. Amazon requests that the Debtors and Buyer each confirm, by return email to Amazon (or other written response), that:

(a) the Assumed Amazon Contracts are as set forth in Paragraph 9 hereof;

(b) the Buyer Affiliates are Affiliated Designees under the Asset Purchase Agreement; and

(c) the Amazon Receivables and Net Receivable Amount are included in the Acquired Receivables acquired by Buyer under the Asset Purchase Agreement, and no other amounts are owed by Amazon to the Debtors with respect to the Assumed Amazon Contracts for the period through the Reconciliation Date.

14. If Amazon receives the foregoing confirmation on or before May 3, 2019, 10:00 a.m. (Eastern Time), Amazon agrees that the Assumption Effective Date for the Assumed Amazon Contracts will be May 3, 2019. If Amazon receives such confirmation after such date and time, Amazon agrees that the Assumption Effective Date will be the date of such receipt.

15. Except as expressly set forth herein, nothing in this Notice of Recoupment and Setoff Rights shall be construed as a waiver or limitation of any of Amazon's rights with respect to any matter whatsoever.

Dated: May 2, 2019

Respectfully submitted,

/s/ Robert T. Honeywell

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